LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
NOV 23 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. [redacted] 41

JOHN W. McCONNELL, JR., JOSEPH N. LANGAN, WILLIAM M. WILLIAMS, JR., and GARET VAN ANTWERP, Appellants,

versus

BETTYE FRINK, Secretary of State of the State of Alabama; HARRELL HAMMONDS, Judge of Probate of Lowndes County, Alabama, JOHN A. SANKEY, Judge of Probate of Montgomery County, Alabama; J. PAUL MEEKS, Judge of Probate of Jefferson County, Alabama; JOHN GRENIER, Chairman of the Alabama State Republican Executive Committee; PERRY O. HOOPER, Secretary of the Alabama State Republican Executive Committee; H. G. RAINS, Secretary of the Alabama State Democratic Executive Committee; MacDONALD GALLION, Attorney General of the State of Alabama, Appellees.

On Appeal from the United States District Court for the Middle District of Alabama, Northern Division.

JURISDICTIONAL STATEMENT OF APPELLANTS

JOHN W. McCONNELL, JR.,
1101 Merchants National
Bank Building,
Mobile, Alabama,
Attorney for Appellants.

HAUSER PRINTING CO., INC., NEW ORLEANS

INDEX

Subject

	PAGE
Opinion Below	2
Jurisdiction	2
Question Presented	3
Statutes Involved	4
Statement	4
The Question is Substantial	5
Conclusion	8
Proof of Service	8
Appendix A	11

Cases Cited

Baker v. Carr, 369 U.S. 186	3
Maryland Committee for Fair Representation, et al, v. Tawes, Governor, ___ Md. ___, 182 A. 2d 877 (June 28, 1962)	6
Scholle v. Hare, 369 U.S. 429	3, 6
Toombs v. Fortson, 205 F. Supp. 248 (N.D. Ga., May 25, 1962)	6
W.M.C.A., Inc., et al, v. Simon, ___ U.S. ___ (8 L. Ed 2d 430, June 11, 1962)	3

Statutes Cited

Title 28, U.S.C., § 1253	3
Title 28, U.S.C., § 1343 (3)	2
Title 28, U.S.C., § 2101 (b)	3
Title 28, U.S.C., § 2201	2
Title 28, U.S.C., § 2202	2
Title 28, U.S.C., § 2281	3
Title 28, U.S.C., § 2284	3
Title 42, U.S.C., § 1983	2
Title 42, U.S.C., § 1988	2

INDEX—(Continued)

Constitutions Cited PAGE

Alabama Constitution, 1901:
§ 39 ..... 4, 11
§ 44 4
§ 50 ..... 4, 11
§ 197 ..... 4, 6
§ 198 ..... 4, 6
§ 199 ..... 4, 5, 6, 7
§ 200 ..... 4, 5
§ 202 4
§ 203 4
§ 284 4

United States Constitution:
Fourteenth Amendment 4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. . . . . .

JOHN W. McCONNELL, JR., JOSEPH N. LANGAN, WILLIAM M. WILLIAMS, JR., and GARET VAN ANTWERP, Appellants,

versus

BETTYE FRINK, Secretary of State of the State of Alabama; HARRELL HAMMONDS, Judge of Probate of Lowndes County, Alabama, JOHN A. SANKEY, Judge of Probate of Montgomery County, Alabama; J. PAUL MEEKS, Judge of Probate of Jefferson County, Alabama; JOHN GRENIER, Chairman of the Alabama State Republican Executive Committee; PERRY O. HOOPER, Secretary of the Alabama State Republican Executive Committee; H. G. RAINS, Secretary of the Alabama State Democratic Executive Committee; MacDONALD GALLION, Attorney General of the State of Alabama, Appellees.

On Appeal from the United States District Court for the Middle District of Alabama, Northern Division.

JURISDICTIONAL STATEMENT OF APPELLANTS

Appellants appeal from the Judgment of the three-Judge United States District Court for the Middle District of Alabama, entered on July 25, 1962, adjuging and de-

creeing certain statutes of the State of Alabama, relating to the reapportionment of the Legislature of Alabama to be unconstitutional and void, and reapportioning the Legislature of Alabama, and ordering and enjoining certain named parties to take certain action, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the Appeal and that a substantial question is presented.

OPINION BELOW

The Opinion of the District Court (_____ F. Supp. _____) is not yet reported, but it and the Court's decree appear as Appendix No. 1 to the separate Jurisdictional Statement of Appellants in O.T. No. 501, *Reynolds, et al, v. Sims, et al*, which was filed in this Court on October 12, 1962.

JURISDICTION

The proceeding below was instituted by the original Plaintiffs below on their own behalf and on behalf of all persons similarly situated and in which they sought a declaratory judgment pursuant to Title 28, U.S.C., §§ 2201 and 2202, as well as injunctive relief. The Complaint asked for a declaration of Plaintiffs' rights concerning the apportionment of the Legislature of Alabama and other relief necessary to insure to them equal protection of the laws theretofore denied to them and guaranteed to them under the Fourteenth Amendment to the Constitution of the United States. Jurisdiction was founded on the above sections of the United States Code and on Title 42, U.S.C., §§ 1983 and 1988 and on Title 28, U.S.C., § 1343(3). Cross-Appellants and others intervened, asking more specific relief, and were, by order of Court, added as additional parties to the proceeding.

All parties plaintiff are citizens, taxpayers, residents and voters of the State of Alabama. Defendants are certain public and political party officials who control and operate the election processes by which the members of the Alabama Legislature are selected under Alabama law.

The case was heard and determined by a panel of three judges convened under Title 28, U.S.C., §§ 2281 and 2284, and the decree from which the Cross-Appeal was taken was entered on July 25, 1962, following the opinion of the Court filed on July 21, 1962. A preliminary opinion of that Court entered on April 14, 1962, is reported at 205 F. Supp. 245.

Notice of appeal from said decree was filed in O.T., 1962, No. 501, *Reynolds, et al, v. Sims, et al, supra*, on August 17, 1962. These Cross-Appellants thereafter filed their separate Notice of Appeal in the United States District Court for the Middle District of Alabama, on September 22, 1962, within 60 days of the final order or decree from which the Cross-Appeal is taken, under the provisions of Title 28, U.S.C., § 2101(b).

Jurisdiction of this appeal is conferred on this Court by Title 28, U.S.C., § 1253, and is sustained by the cases of *Baker v. Carr*, 369 U.S. 186, *Scholle v. Hare*, 369 U.S. 429; and *W.M.C.A., Inc., et al v. Simon*, ... U.S. ..... (8 L. Ed. 2d 430, June 11, 1962).

QUESTION PRESENTED

The sole question raised by the Cross-Appellants in this Cross-Appeal and which they maintain should be answered by this Court in the affirmative, is:

Were these Cross-Appellants entitled to a decree in the Court below, based on the proposition that the Equal

Protection Clause of the Fourteenth Amendment to the United States Constitution requires that each person of a state have equal representation, based on a reasonable or rational population basis, in both houses of a legislature, where the legislative power of the state is vested in a two-house legislature?

STATUTES INVOLVED

Involved in this Cross-Appeal are §§ 39, 44, 50, 197, 198, 199, 200, 202, 203 and 284 of the Constitution of Alabama of 1901; and Acts No. 91 and 93, 1962 Special Session of the Legislature of Alabama. These Statutes and Constitutional provisions, except for §§ 39 and 50, are set out on pp. 5 through 14 to the separate Jurisdictional Statement of Appellants Reynolds, et al, filed in this Court on October 12, 1962, and §§ 39 and 50 appear as Appendix A to this Statement.

STATEMENT

These Cross-Appellants adopt, by reference herein, the "Statement of the Case" appearing in the separate Jurisdictional Statement of Appellants David J. Vann, et al, heretofore filed in this Court. In addition thereto, these Cross-Appellants wish to add the following:

The Constitution of Alabama of 1901 states flatly and unequivocably that (§ 284) "Representation in the legislature shall be based upon population". § 44 of the same Constitution provides that "The legislative power of this state shall be vested in a legislature, which shall consist of a senate and a house of representatives." The Fourteenth Amendment to the Constitution of the United States provides in part that "No state shall * * * deny to any person within its jurisdiction the equal protection of the laws." It is the contention of these Cross-Appellants

that, under the framework and provisions of the present Alabama Constitution and operating within the prohibition of the above quoted provision of the Fourteenth Amendment to the Constitution of the United States, a person within the jurisdiction of the State of Alabama can only be granted equal protection of its laws by having equal representation in **both** houses of the Alabama Legislature, i.e., representation that is based on a reasonable or rational, not necessarily mathematically equal, population basis.

Plaintiffs in the Complaint filed in the District Court asked for a declaratory judgment and specifically requested that the Court, in its judgment, order (1) that **both** houses of the Legislature of the State of Alabama must be apportioned in accordance with population and (2) that certain provisions of the Constitution of Alabama (specifically, the proviso in § 199 and the last sentence in § 200), to the extent that they cannot be followed in apportioning the two houses of the Alabama Legislature on the basis of population, are repugnant with § 284 of the Alabama Constitution and with the Fourteenth Amendment to the Constitution of the United States. The District Court was asked to declare on these two questions and either (a) to apportion the Legislature of Alabama in accordance therewith or (b) to establish this as a guide for the Legislature of Alabama in the future apportionment of itself. The District Court did not so rule in either regard.

THE QUESTION IS SUBSTANTIAL

This Cross-Appeal squarely tenders the most important unresolved question involved in pending reapportionment litigation:

Does not the Equal Protection Clause of the Four-

teenth Amendment to the United States Constitution require that each person residing in a state have equal representation based on a reasonable or rational population basis in **both** houses of a legislature, where the legislative power of the state is vested in both houses?

This question has been pointed up, but not resolved, in the opinions rendered in the three reapportionment cases decided by this Court within the past year. Other courts have also raised this question and in some instances, have decided that the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution is satisfied if only one house of a two-house Legislature is apportioned according to population. See the *Maryland Committee for Fair Representation, at al, v. Tawes, Governor,* ..... Md. ....., 182 A. 2d 877 (June 28, 1962). Although not decided, the question was also raised in *Toombs v. Fortson,* 205 F. Supp. (N.D. Ga., May 25, 1962). This question is also presented to this Court by the appeal in *Scholle v. Hare, supra.*

That this question is of paramount importance in the apportionment of the Legislature of Alabama can be seen in the various provisions of the Constitution of Alabama with regard to the size and composition of the two houses of its Legislature. The size of each house of that Legislature has certain constitutional limitations. The House of Representatives has a constitutional limitation (§ 198) on the maximum number (106). Both the maximum and the minimum number of members in the Senate, which in turn is tied to the number of members in the House of Representatives, is fixed (§ 197). Another Constitutional provision provides that each county shall be entitled to at least one representative (§ 199), which in effect fixes the minimum number of members in the House of Representatives (67 at this time). The size of the

House of Representatives between 67 and 106 is determined by the Legislature (§ 199). Thus, it could fix the number at 67 members, in which case, each county, regardless of population, would be entitled to one, and only one, representative, and in which case the number in the Senate could vary from 17 members (¼ of 67) to 22 members (⅓ of 67). However, again, unless those 17 to 22 members were apportioned in accordance with population, which could only be accomplished if certain more populous counties were to be divided into more than one senatorial district, neither house of the Legislature would be based on population. However, even if the number of members in the House of Representatives should be fixed at the maximum (106) and the number in the Senate at the minimum (27, ¼ of 106), there would still be inequality in representation in the Senate unless the more populous counties were again to be divided into more than one senatorial district.

It is recognized by Cross-Appellants that mathematical exactitude in the equality of representation in a legislature is not required by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. However, it is earnestly contended that that provision of the United States Constitution can only be satisfied by a person within the jurisdiction of a state having equality of representation in the entire legislative process, which, in the case of Alabama, means both houses of its legislature, as nearly as practical, considering the distribution of population among the political subdivisions of the State.

In this connection, Cross-Appellants wish to emphasize that the question presented is not affected by whether or not an under-represented area is urban or rural in characteristic or by the composition of the political sub-

divisions involved. The question concerns solely the right of a person within the jurisdiction of a state, regardless of the area in which he resides, to equal representation in its legislative process, and therefore, to equal protection of its laws.

This Cross-Appeal was taken solely by reason of the failure of the District Court in its Decree either to apportion both houses of the Alabama Legislature on the basis of population, or to declare, as a guide to the Legislature of the State of Alabama in apportioning itself, that the Equal Protection Clause requires that both houses of that Legislature be apportioned on the basis of population. This question must be resolved before there can be a rational and constitutional apportionment of the Legislature of Alabama.

CONCLUSION

Cross-Appellants respectfully submit that jurisdiction should be noted in this appeal and the case placed on the argument calendar for full consideration by this Court.

JOHN W. McCONNELL, JR.,
1101 Merchants National
Bank Building,
Mobile, Alabama,

PROOF OF SERVICE

I, JOHN W. McCONNELL, JR., an Appellant herein, hereby certify that on the _____ day of November, 1962, I served copies of the foregoing Jurisdictional Statement on each of the parties to this suit, by mailing a

copy by U. S. Mail, postage prepaid, to their respective attorneys of record, or if none, to them, personally at the addresses hereinafter indicated:

1. On Hon. MacDonald Gallion, Attorney General of Alabama, Montgomery, Alabama, Attorney of record for himself and for Hon. Bettye Frink.
2. On Boswell and Smith, Geneva, Alabama, Attorneys of Record for Judge Harrell Hammonds
3. On Judge John A. Sankey, Court House, Montgomery, Alabama.
4. On Judge J. Paul Meeks, Court House, Birmingham, Alabama.
5. On Hon. John Grenier, Comer Building, Birmingham, Alabama.
6. On Hon. Perry O. Hooper, Washington Building, Montgomery, Alabama.
7. On Roy D. McCord, Esquire, Gadsden, Alabama, Attorney for Hon. H. G. Rains.
8. On Hon. Roy Mayhall, Court House, Jasper, Alabama.
9. On Charles Morgan, Jr., Esquire, Bank for Savings Building, Birmingham, Alabama, Attorney for original plaintiffs.
10. On Cooper, Mitch & Crawford, Bank for Savings Building, Birmingham, Alabama, Attorneys for intervening plaintiffs Farr et al.
11. On Thomas G. Gayle, Esquire, 1104½ Water Avenue, Selma, Alabama, Attorney for appellant Reynolds.
12. On Rankin Fite, Esquire, Hamilton, Alabama, Attorney for appellant Pearce.
13. On David J. Vann, Esquire, Comer Building,

Birmingham, Alabama, Attorney of Record for intervening plaintiffs David J. Vann, et al.

JOHN W. McCONNELL, JR.

APPENDIX A

Constitution of Alabama of 1901

§ 39. The legislature may, by a vote of two-thirds of each house thereof, arrange and designate boundaries for the several counties of this state, which boundaries shall not be altered, except by a like vote; but no new county shall be formed hereafter of less extent than six hundred square miles, and no existing county shall be reduced to less than six hundred square miles; and no new county shall be formed unless it shall contain a sufficient number of inhabitants to entitle it to one representative under the ratio of representation existing at the time of its formation, and leave the county or counties from which it is taken with the required number of inhabitants to entitle such county or counties, each, to separate representation; * * *.

§ 50. The legislature shall consist of not more than thirty-five senators and not more than one hundred and five members of the house of representatives, to be apportioned among the several districts and counties, as prescribed in this Constitution; provided that in addition to the above number of representatives, each new county hereafter created shall be entitled to one representative.